Should this question come up for decision in the future, speaking for myself, I would say that it is open to a chargee to issue a notice in Form 16E in respect of the principal sum. If that sum is not paid in compliance with the notice and an order for the sale of the land is made on that ground, the court would have the power to order that any interest due on the principal sum be paid out of the proceeds of sale. Indeed section 257(1)(c) requires the court to specify the total amount due to the chargee at the date on which the order for sale is made. Of course, if the chargor pays the amount of the principal sum stipulated in Form 16E, the chargee will have to issue a further notice for the recovery of interest, in which event only a notice in Form 16D would appear to be appropriate.

Ali F.J.: I agree with the decision to dismiss this appeal and I also agree with everything that has been said on the matters arising. I only wish to make the following observation.

When a chargee issues a notice in Form 16D I do not think it can possibly be objected to, as was done in this case. A chargee, entitled to ask for an order of sale under section 255 of the National Land Code to which Form 16E is applicable, is not, I believe, precluded from proceeding under section 254 of the Code if he so chooses.

Appeal dismissed.

Solicitors: *M. Segaram & Co.; Allen & Gledhill.*

TAN KIM LUE v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) November 27, 1970]

[Malacca — Criminal Appeal No. 20 of 1970]

Criminal Law and Procedure — Minor offences — Fraudulent possession of property — Reasonable suspicion — Explanation of accused — Minor Offences Ordinance, 1955, s. 29(1).

This was an appeal against the conviction of the appellant on a charge of having in his possession six car jacks which according to the charge was reasonably suspected of being stolen and in respect of which he failed to give a satisfactory account of how he came by the same.

The goods were found in the appellant's shop and he produced a witness to show that he had bought them from another shop.

Held, allowing the appeal: in this case in view of the unsatisfactory evidence produced by the prosecution there was no basis for calling upon the accused to enter on his defence and in any event the learned magistrate should in this case have accepted the explanation of the accused which could reasonably be true.

Cases referred to:-

(1) *Munusamy* v. *Public Prosecutor,* [1937] M.L.J. 93.

(2) *Queen-Empress* v. *Dhanjibhai Edulji,* I.L.R. 20 Bom. 348.

(3) *Woo Hon Weng* v. *Public Prosecutor,* (1958) 3 M.C. 143.

(4) *Arunasalam Thevar* v. *Public Prosecutor,* [1956] M.L.J. 109.

(5) *Tan Hoe Seng* v. *Public Prosecutor,* [1936] M.L.J. 272.

CRIMINAL APPEAL.

Ting Poi Tek for the appellant.

Ahmad bin Haji Abdul (Deputy Public Prosecutor) for the respondent.

Sharma J. (delivering oral judgment): The appellant in this case was charged under section 29(1) of the Minor Offences Ordinance for having in his possession six car jacks which according to the charge were reasonably suspected of being stolen and in respect of which he failed to give a satisfactory account how he came by the same. The only evidence produced by the prosecution was that of P.W.1, Sergeant 1176, who said he went to the shop of the appellant and at the rear of the shop discovered six jacks and that he questioned the appellant about them. He said that he suspected them to be stolen merely because the appellant could not give any satisfactory explanation as to how they came into his possession and apart from that he had no other reason whatsoever to suspect that the property in question was stolen property. Section 29(1) of the Minor Offences Ordinance 1955 reads as follows:—

"Any person who has in his possession ... anything which may be *reasonably suspected* of being *stolen* or fraudulently obtained shall, if he fails to account satisfactorily how he came by the same, be liable to a fine not exceeding...."

The first ingredient of the offence is that the property in question must be *reasonably suspected of being stolen* and the property so reasonably suspected of being stolen should be found in the possession of the accused. I need do no better than quote from the judgment of Terrell Ag. C.J. in *Munusamy* v. *Public Prosecutor*[1] where he said:

"It is for the court to be satisfied that the circumstances were such that the police officer had grounds for suspicion that the property in the accused's possession was stolen property and that such suspicion was reasonable.

Unless those conditions can be shown to have been fulfilled the accused should not be called upon for an explanation.

The following passage from the judgment of the court in *Queen-Empress* v. *Dhanjibhai Edulji*[2] may be cited. The judgment was delivered upon an application for revision under section 35 of the Indian Police Act of 1856, upon which section 35 of the Minor Offences Enactment is based. At page 349 Jardine J. says:

'It being a penal Enactment which shifts the burden of proof of innocence at a certain point on to the accused, it has to be construed strictly. We are of opinion that before the accused can be called on to account for the property, there must be evidence amounting to proof to the satisfaction, not of the police officer or witness, but of the court, that the accused possessed or conveyed a thing, of which this may be predicated — we mean after judicial consideration of the court — *viz.* that the thing 'may be reasonably suspected of being stolen or fraudulently obtained.' This phrase is used as an adjective and unless it applies, accused ought not be called upon to account nor to be convicted....'"

The case of *Woo Hon Weng* v. *Public Prosecutor*[3] was brought to the notice of the learned magistrate by the counsel for the accused and it is surprising that he failed to consider it. In this case Rigby J. (as he then was) said:

"Now for the prosecution to succeed in a charge under this section it is incumbent upon it to satisfy the court beyond reasonable doubt:—

(1) That the police officers had grounds for suspicion at that time— and the words "at that time" are of crucial import-

ance — that the property in the possession of the accused was stolen property; and

(2) That such suspicion was reasonable. (The case of *Munusamy* v. *Public Prosecutor*[1]).

It is only after the prosecution has discharged the burden of proving the existence of these two essential prerequisites to the satisfaction of the court — not, be it noted, to the satisfaction of the police officer or anyone else — that the onus then shifts to the accused to account to the satisfaction of the court as to how he came to be in possession of that property. As Thomson J. (as he then was) indicated in the case of *Arunasalam Thevar* v. *Public Prosecutor*,[4] it is not sufficient for the magistrate simply to ask himself the question whether the accused has given a satisfactory explanation as to how he came by the article in his possession. He must first ask himself the question — and be satisfied that the answer is in the affirmative — whether the accused was carrying something that might be reasonably suspected of being stolen. Each case, of necessity, must depend upon its own facts but, generally speaking, it is of obvious importance in assisting the Court to determine whether the police officer's suspicion at the time was reasonable — and, indeed, whether the accused's explanation for possession of the property was, and is, satisfactory — to hear in evidence the explanation given by the accused to the police officer at the time when first asked to account for possession of such property."

The learned deputy public prosecutor in this appeal has very rightly conceded that he is not in a strong position to support the conviction. In view of the extremely unsatisfactory evidence produced by the prosecution, there was, in fact, no basis for calling upon the accused to enter on his defence.

Another sad aspect of this case is that the learned magistrate having once decided to call upon the defence and the defence having given an explanation which could very reasonably be true still convicted him. One of the defence witnesses deposed that the six jacks were bought from the shop of Hock Tong Hin by the appellant and brought by him in the witness's car. This witness was never cross-examined by the prosecution at all. In spite of this the learned magistrate has convicted the appellant. This, I think, was entirely wrong. When the prosecution chooses not to cross-examine a witness the natural inference is that it accepts the evidence of that witness in its totality.

I also take this opportunity to impress upon the learned magistrate that once a notice of appeal is filed, it is his duty to give his grounds of decision. Besides a few remarks which he seems to have made at the end of the submissions, there is nothing in the record to show how the learned magistrate arrived at the decision which is now appealed against. Section 302(3) of the Straits Settlements Criminal Procedure Code enacts that: —

"When a notice of appeal has been lodged the court appealed from shall make a signed copy of the grounds of decision in the case and cause the same to be served upon the appellant or his advocate by leaving the said copy at the address mentioned in the notice of appeal, or by posting it by registered post addressed to the appellant at the said address."

It may also serve a useful purpose if I take this opportunity to repeat what Rigby J. said in the case of *Woo Hon Weng* v. *Public Prosecutor*[3] regarding the admissibility of those parts of the statement of the accused to the police which tend to explain or constitute what may be regarded as a factor on his part to give a satisfactory explanation of how he came into possession of the goods in question: —

"Apart from principles of elementary common sense which must necessarily impel the admissibility of such evidence, the case of *Tan Hoe Seng* v. *Public Prosecutor*[5] is clear authority for the proposition that any explanation given by the accused to the police on a prosecution under this section can be — and, indeed, should be — used in evidence, whether it be for or against the accused, and the provisions of section 124 of the Criminal Procedure Code have no application under this section."

As a result the appeal is allowed and the conviction and sentence is set aside. The fine, if paid, shall be refunded to the appellant and the six car jacks returned to him.

Appeal allowed.

Solicitors: *Murphy & Dunbar.*

RE MICHAEL JOHN MUSTILL

[O.C.J. (Yong J.) December 14, 1970]

[Kuala Lumpur — Originating Motion No. 36 of 1970]

Advocates and Solicitors — Admission — Ad hoc — Special grounds — Special qualification or experience of a nature not available amongst advocates and solicitors in Malaysia for the purpose of particular case — Advocates and Solicitors Ordinance, 1947, ss. 5(5) and 8A.

The petitioner, a Queen's Counsel, sought admission as an advocate and solicitor of the High Court in Malaya under section 8A of the Advocates and Solicitors Ordinance, 1947, for the purpose of appearing as leading counsel for a defendant in a suit in connection with the loss of cargo of steel pipes worth nearly $1,000,000 on board ship during a voyage from Prai to Brunei under a policy of marine insurance. The petitioner had for the past 15 years been actively engaged in the practice of commercial law at the English Bar and was an acknowledged expert in the field of marine insurance and charterparties, he being a joint editor of the chapter dealing with "Marine Insurance" in *Halsbury's* Laws of England and of the current edition of *Scrutton* on Charterparties. Counsel for the plaintiff in the suit strongly opposed the motion on the ground that the petitioner had failed to show "special grounds" under section 5(5) of the Ordinance which provided for the shortening of the statutory period of posting of the notice and the dispensing of reading in chambers.

Held: (1) "special grounds" imposed under section 5(5) of the Advocates and Solicitors Ordinance are not relevant to applications for *ad hoc* admissions under section 8A;

(2) in this case, there was sufficient evidence before the court to hold that the petitioner is a person who has special qualifications and experience in the branch of the law of marine insurance and charterparties entitling him to be admitted as advocate and solicitor under section 8A of the Ordinance.

Case referred to:-

(1) *Re G.G. Ponnambalam* [1969] 2 M.L.J. 263.

MOTION.

D. L. Pickard for the petitioner.

Mohamed Haji Said (Federal Counsel) for the Attorney-General.

K. A. Menon for the Bar Council of Malaya and Bar Committee, Selangor.

Ng Ek Teong for the plaintiff in the Civil Suit.

Yong J.: This motion by Michael John Mustill, a Barrister-at-Law and a Queen's Counsel, of London